

# Continuous Code Revision in Ohio

WILLARD D. CAMPBELL\*

The history of code revision in Ohio clearly demonstrates the need not only for a complete revision which is now in progress but also a continuous recodification and revision of the statutes enacted by our legislature in years to come.

Prior to March 27, 1875, there had been no legislation providing for a commission to revise the statutory laws of Ohio. While there had been a number of professed revisions before that date, nothing more had been attempted than the compilation in one chapter of the various provisions on any one subject and the collection of such chapters into a volume. The first such revision was made during the session of the Legislature which was held at Chillicothe, in the years 1804 and 1805. At the same session all the laws, with few exceptions, adopted by the Governor and Judges of the Northwest Territory under the Ordinance of 1787, or enacted by the legislature under the territorial government, were repealed. That revision included statutes for the administration of justice, the conveyance of property, the collection of revenue, the organization of the militia, the punishment of crime, and other statutes previously adopted or enacted which were being amended and re-enacted. Succeeding legislatures made similar revisions of the laws.

Then, beginning in 1833, several authors prepared editions of the statutes of a more permanent character. Salmon P. Chase prepared a chronological edition in 1833. From 1841 to 1868, Judge Swan made several compilations of the statutes, setting them up under 131 chapter headings alphabetically arranged.

In the Constitution of 1851, provision was made for a commission to revise, reform, simplify, and abridge the practice of the courts of record, and the 50th General Assembly, on March 11, 1853, enacted a code of civil procedure prepared by such commission.<sup>1</sup> In 1869, acts "providing for the organization and government of municipal corporations" and "establishing a code of Criminal Procedure" were enacted.<sup>2</sup>

Finally, in 1874, a bill was introduced by Representative George W. Boyce, of Hamilton County, to provide for a general revision of the statutes. Such bill failing of enactment, Senator Lucian C. Jones, of Trumbull County, introduced a similar bill in 1875, which was enacted.<sup>3</sup>

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\* Director Ohio Bureau of Code Revision.

<sup>1</sup> 51 Ohio Laws 57 *et seq.*

<sup>2</sup> 66 Ohio Laws 149 *et seq.*

<sup>3</sup> 72 Ohio Laws 87 *et seq.*

The title of the act of March 27, 1875, was "To provide for the revision and consolidation of the statute laws of Ohio." In conformity with the act the Governor appointed three commissioners to revise and consolidate the general laws. They proceeded to divide their work, "The Revised Statutes," into four parts, "Political, Civil, Remedial, and Penal." An act of June 23, 1879,<sup>4</sup> provided for printing and distributing the Revised Statutes, which were edited and annotated by the commissioners and were published for the state in two volumes. These Revised Statutes, as amended, supplemented, and repealed by succeeding general assemblies, were in force from 1880 to the time of the adoption of the General Code of 1910.

The 77th General Assembly, by an act passed on April 2, 1906,<sup>5</sup> provided for the appointment of three commissioners to revise and consolidate the general statute laws of Ohio. In December, 1906, the commissioners were appointed and began the codification of the laws of Ohio. Their work was submitted to and adopted by the legislature on February 14, 1910, as Senate Bill No. 2 of the 78th General Assembly. The "General Code" was divided into the same four topical parts as the "Revised Statutes" had been.

On March 23, 1910, the general assembly passed an act "to supplement section 779 of the General Code, by enacting Section 779-1, relating to the publication of the laws," and pursuant to such act the Commissioners of Public Printing published the "General Code of the State of Ohio."

On March 28, 1911, the 79th General Assembly enacted Section 772 of the General Code,<sup>6</sup> which authorized the Attorney General to prepare an appendix to the General Code to consist of certain acts and parts of acts not included by the commission in the General Code. The Attorney General, Timothy S. Hogan, employed James E. Campbell and Lewis C. Laylin to prepare such appendix, which later became a part of the General Code by a supreme court decision.<sup>7</sup>

After a lapse of 34 years, the 96th General Assembly, in 1945, created the Bureau of Code Revision to provide for an additional service to the general assembly and its committees for the purpose of facilitating the continuous codification and revision of the statute law by the general assembly and the adaptation of new legislation to the form and arrangement of the General Code.

The Bureau of Code Revision of the state of Ohio is made up of the Director and his staff and the Commission which is composed of three appointees of the Governor, three members of the Senate

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<sup>4</sup> 76 Ohio Laws 192.

<sup>5</sup> 98 Ohio Laws 221.

<sup>6</sup> 102 Ohio Laws 46.

<sup>7</sup> State *ex rel.* v. LeBlond, 108 Ohio St. 41.

and three members of the House of Representatives, which includes the Chairman of each Judiciary Committee of the two branches of our state legislature. The appointments of the Governor are for a period of six years, with one appointment being made each two years, thus assuring a continuation of the program and a continuity of policy through the changes of legislative personnel and the leadership of each administration. The Commission selects its own chairman and appoints its director for a six year period. Attorney Charles D. Fogle of Marietta, an appointee of Governor Frank J. Lausche, is serving as Chairman of the Commission and the writer as Director of the Bureau.

During the regular session of the 97th General Assembly in 1947 the legislature repealed 898 sections of law upon the recommendation of the bureau.<sup>8</sup> The legislature further passed a joint resolution<sup>9</sup> approving the plan presented by the bureau for the order, classification, and arrangement of the General Code, and another resolution<sup>10</sup> directing the bureau to draft and submit to the general assembly, legislation consolidating the 39 separate municipal court acts.

In the regular session of the 98th General Assembly 305 additional sections were repealed upon the recommendation of the bureau,<sup>11</sup> and by resolution<sup>12</sup> the legislature directed by the bureau to make research of the court opinions and needs of the state in the field of domestic relations and to draft and submit a bill reflecting the recommendations resulting from this study.

Under the act creating it,<sup>13</sup> the bureau has taken over the former functions of the Attorney General as the codifier of the laws of the state, and each law passed since 1945, before being filed with the Secretary of State's office, has been referred to the bureau and, if of a general and permanent nature, numbered by the Director of Code Revision so as to conform to the General Code.

It becomes apparent from the above survey of our state history that there is a great need for revision and that work on it is long overdue. It is much in order to note that before the turn of the century the legislature required that all petitions filed by a plaintiff in any cause of action must contain a statement of facts constituting the cause of action in ordinary and concise language.<sup>14</sup> This legislative requirement for simplicity of language in petitions to be filed in our courts could well be applied to instruments of

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<sup>8</sup> S.B. 18, 19, and 25 (122 Ohio Laws 25-7).

<sup>9</sup> S.J.R. 10 (122 Ohio Laws 774).

<sup>10</sup> S.J.R. 17 (122 Ohio Laws 767).

<sup>11</sup> S.B. 119 (123 Ohio Laws).

<sup>12</sup> S.J.R. 32 (123 Ohio Laws).

<sup>13</sup> OHIO GEN. CODE §§ 76-1 to 76-8 inc.

<sup>14</sup> OHIO GEN. CODE § 11305.

their own creation. No one disputes the fact that our laws should not only be uniform, but constructed in ordinary and concise language devoid of complexity and free from ambiguous phrases.

A great need for revision, rearrangement, and renumbering of the code is occasioned by a recognized change in the thinking of lawyers and the nature of the practice of law. The general practitioner has been in many instances replaced by attorneys in specialized fields of law. Lawyers practicing in the fields of administrative, labor, probate, criminal, or taxation law naturally desire that such be made available to them within one grouping and conceivably within one separate volume of the published code. There has been within recent years a definite trend to make a placement of law according to subject matter rather than under the political unit dealing with its administration. Schools, libraries, law enforcement, taxes, drainage, and conservation have become state problems and pertinent legislation is no longer largely administered by local political units. These subjects, accordingly, require new placement under general headings rather than under the topics concerning districts, townships, and counties. The consecutive numbering system in the state of Ohio has occasioned many gaps in the numbering system by repeal of former enactments. These groups of unused section numbers have been frequently filled by former codifiers of the law without regard to illogical placement.

Before discussing the effect of revision in Ohio and the nature of the work of the bureau, it seems desirable to make clear certain underlying principles governing the subject matter of revision of statutes which frequently are lost sight of by those who have not dealt thoroughly with the subject. The first of these principles is the distinction between "compilation of statutes," as has been chiefly done in Ohio heretofore and a "revision of statutes" as is now authorized by the legislature for the bureau.

A "compilation of statutes" is a mere bringing together of pre-existing statutes in the form in which they appear upon the books at the time, with the substitution of the latest amendments for the material amended, under an arrangement designed to facilitate consultation of them. No change in wording can be made in such a work. At times, by editorial authority only, statutes assumed to be superseded by later statutes are omitted from such a work, but the omission does not affect the actual efficacy of the material so omitted, and accordingly laws existing prior to the codification of 1910 and not repealed or reenacted thereby, have been checked by the bureau. Confusion of expression and inconsistency in statutes cannot be remedied in a compilation. Its one advantage is the bringing together of the statutes of a certain class, or those which deal with a certain subject matter, under a logical arrangement, usually in a publication which can be indexed and in which

the difficulties of consultation are minimized. Compilation of statutes makes no change in their effect either upon other statutes or upon each other.

"'Codification' is the process of collecting and arranging the laws of a state into a code, that is, into a complete system of positive law, scientifically ordered and formulated by legislative authority."<sup>15</sup> There is, accordingly, considerable difference between a code of laws in a state and a compilation of its statutes. The code is broader in scope and more comprehensive in its purposes. Its general object is to embody all the laws of the state from whatever source derived. When the General Code of Ohio was adopted by the legislature in 1910, it had the same effect as one general act containing all the provisions embraced in the three volumes. The General Code became then more than evidentiary of the law; it became the law itself.

"Revision of statutes," on the other hand, cannot be accomplished except by enactment or reenactment of the finished product. It involves change in expression, and its purpose may be either to accomplish substantive change in the statute law or to improve its form. Viewed from the standpoint of the treatment of its subject matter, revision is of two types, which are often confused.

"Substantive revision" is the process by which the meaning and effect of preexisting statutes are changed so as to accommodate them to changing conditions. This involves change in their effect, and the standard in such revision is that of the policy adopted. Such revision should be, and usually is, accomplished under the aegis of special commissions or groups interested in the activities controlled, or to be controlled, by the statutes to be revised. The revision statutes themselves usually are drafted by experts skilled in the law of the field affected. This type of revision is not the province of the bureau and in order to clarify any misapprehension and to safeguard against any abuse of the general powers of the bureau, its functions are confined clearly to deal only with matters of form and not of substance. In all matters of recommendations for revision by amendment or repeal the bureau will not take any position with respect to changes in substantive law. State policies originate in the legislature and at no time will the bureau suggest changes in substantive law unless requested so to do by formal resolution or law enactment. Revision deals with details, not with fundamentals.

"Formal revision of statutes," on the other hand, deals solely with their form and expression and is carried on for the purpose of producing certainty and conciseness in expression and logic in arrangement of pre-existing statutes, so that they can be found

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<sup>15</sup> WORDS AND PHRASES, Vol. 7.

readily and, when found, can be understood easily. Consolidation of overlapping provisions, correction of inaccurate, prolix, or redundant expressions, elimination of obscurities and conflicts, and the collection and enactment of the whole into a logical arrangement and compactness without change in effect, are the aims of the bureau in completing this type of revision in Ohio.

From the standpoint of subject matter covered, formal revision of the statutes may be either topical or general.

"Topical revision" is revision of those statutes which, by reason of their relationship one to the other, conveniently can be revised together as a topic or logical subdivision of the statute law. "General revision" is revision which includes all or a large body of the statutes in effect at a given time. This latter type of review has become necessary in Ohio by reason of the magnitude of the revision work to be done.

"Continuous revision," of course, is effected on a year-by-year or other continuous basis, usually in the form of topical revision, while "periodic revision" is that performed at given periods, and it usually is general in character. The continuous revision in Ohio necessarily contemplates a bulk revision followed periodically by topical revisions to conform to future legislative needs.

The greatest obstacle encountered by the bureau in revising the code is the constitutional requirement in Ohio that all statutory changes be shown on the draft of the proposed enactment, and the deletions and additions to each sentence and word of the existing law must be marked so that the new measure can be compared with the old. Ohio, unlike most other states, has a provision in its Constitution which requires that "no law shall be revived or amended, unless the new act contains the entire act revived or amended, and the section or sections so amended shall be repealed."<sup>16</sup>

This makes it impossible in Ohio to draw short revision bills by merely changing words or phrases of certain sections or paragraphs. Instead, it is necessary to set forth the entire section in order to correct defects in any part of the section. In practice, if the section contains other provisions which are controversial, legislators do not like to bring such a bill out on the floor where the entire section is subject to amendment and debate. It is apt to take up too much of the legislature's time in order to accomplish its original purpose. Consequently, legislative committees are slow to recommend such bills for passage unless there are serious defects which need immediate attention. This condition not only makes it difficult for the revisor to reconstruct an awkwardly-phrased section of law, but it necessitates the listing of all the thousands of

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<sup>16</sup> OHIO CONST. Art. II § 16.

deletions and supplying the sections with language to conform to the remainder of the section. Every one of the present 19,722 sections has to be rebuilt to show the deletions and additions made to each section. Some sections have as high as two hundred amendments and it is estimated that seventeen thousand require at least two amendments. A restatement of each of these sections of law covering its essential purpose would be far simpler than rebuilding the sections of the old statute by amendment in conformity with the constitutional requirement. Some sections of our law are beyond repair and must be repealed and new ones enacted, but this is exceptional and will be given special reference when the revised code is presented to the general assembly for their consideration.

There are seven main objectives of a complete or bulk revision which the Bureau of Code Revision seeks to accomplish.

The first requisite in approaching the problem was to determine what statutes were in effect and to establish a convenient master file containing true copies of the approximately 23,000 original sections of the statutory law in the state. Some of these laws are not of a general and permanent nature, and hence have been improperly placed in the General Code, and others are omitted and contained only in the session laws of our state when they should be numbered and recognized in the General Code. The publishers correct many such omissions by giving them an unofficial number placed within brackets. The General Code of Ohio should contain all the statutory law in the state that is of a permanent and general nature. If special in character, or limited in time to within two years operation by its own terms, it is neither general nor permanent, and hence is unnumbered and is to be found only in the session laws of the state published by the secretary of state after every regular legislative session.

The second objective and logical step in a complete revision is to eliminate from the statutes the obsolete, unconstitutional, antiquated, and unnecessary sections of law. Over 1,400 of those recommended by the Bureau have been repealed by the past two sessions of the legislature.<sup>17</sup>

Laws pertaining to passenger service on canal boats, or the creation of societies for the apprehension of horse thieves have no applicability to our present day economy. Many awkward and amusing statutes still remain in our code by reason of the controversial nature of their subject matter, but in the absence of their outright repeal will be amended to relate them to modern society.

The third objective of the bureau is to determine, list, and correct the many partially-obsolete sections contained in our laws.

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<sup>17</sup> Senate Bills 18, 19 and 25 in 1947, and Senate Bill 119 in 1949.

Over the years the legislature has made many changes in the names of different departments of government and the names of many abolished offices and departments have been inadvertently left in the statutes, causing imperfection in our law and confusion within the departments as to their proper functions. In many cases, duties and responsibilities of an abolished office still remain as part of our law. In some instances such duties were absorbed by another office or department, while in others they were ignored. One has only to refer to the office of state geologist to illustrate such an instance. That office has been abolished and its duties absorbed by other departments. It is the observation of the bureau that no greater need exists in the state today than that of a clarification and a simplified outline of the functions and duties of each department of our state government. The bureau has uncovered in the code 2,640 sections, which have been briefed and declared to be partially-obsolete to the extent that they contain obsolete phrases that require correction. Inasmuch as this would require separate amendments which would be a burdensome task for the legislature to consider in so many statutes, it is the opinion of the bureau that correction should be effected in connection with the general revision of the code rather than by the amendment of each section prior to the general revision. The so-called "partially-obsolete" are of six types.

The first type of partially-obsolete sections is that which continues to use the names of offices, boards, commissions, and departments which have been legally abolished. Illustrative of this group are sections in Part I (Political) of the General Code which contain phraseology made obsolete by the enactment of the Administrative Code in 1921.<sup>18</sup> Many of the offices, boards, commissions, and other agencies of the state were abolished and new departments took over remaining powers by the provisions of the new law. Many sections, containing the original names, have not been amended to conform to the new names given the departments. This condition prevails in about 1,000 sections of the statutes. Further examples of this type are those sections that contain a reference to a specific "officer," "board," or "institution," the name of which has been changed or abolished by a later enactment. Such names are obsolete and confusing when continuing to appear in other sections of the statutes. For example, the office of "county surveyor" was changed to "county engineer."<sup>19</sup> The legislature abolished the "Tax Commission of Ohio" in 1939 and vested its powers in the new "Department of Taxation,"<sup>20</sup> which was com-

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<sup>18</sup> OHIO GEN. CODE § 154-1 *et seq.*

<sup>19</sup> OHIO GEN. CODE § 2782-1.

<sup>20</sup> OHIO GEN. CODE § 1464.



posed of the tax commissioner and the board of tax appeals, but the words "Tax Commission of Ohio" still persist in numerous sections of the code, and are confusing. The name "county infirmaries" was changed to "county homes," in 1919,<sup>21</sup> which necessitates that numerous sections now using the term "county infirmaries" be changed by the bureau in the process of revision.

A second type of partially-obsolete sections is that which contains "ambiguous" phrases. An outstanding example is the phrase "and/or" which appears in numerous sections of the code even though the courts have generally held such phrase to be "ambiguous" and "meaningless."<sup>22</sup> Most authorities have stated that while the use of the term "and/or" does not ordinarily invalidate a statute its use in statutes has generally been condemned.

A third type of partially-obsolete sections is that which contains phrases such as "in sections one and two of this act." These phrases have been used by the legislature in identifying parts of lengthy acts, the sections of which were not given code numbers by the legislature. Since the codifier of the laws of the state assigned to such sections appropriate code numbers, and had no power to change or alter the language within a section, it resulted in the section references losing their identity when official numbers were assigned.

A fourth type of partially-obsolete sections is that which contains paragraphs which have been held to be unconstitutional by a court of last resort, and yet the invalid phrases are separable from the remainder of the section.<sup>23</sup>

A fifth type of partially-obsolete sections consists of those which refer to other sections that have been subsequently repealed. Sometimes these sections are rendered totally "obsolete" by reason of the fact that the repeal of the section referred to renders the dependent section wholly ineffective. In most cases, however, the statute containing the reference to another section is not deemed totally obsolete but rather "partially obsolete."<sup>24</sup>

A sixth type of partially-obsolete sections appears in acts creating boards or commissions in which the provision is made for the governor to appoint its members for original terms to be staggered so that they expire at successive intervals. After the provision concerning the expiration of these first terms, the acts further usually provide that succeeding members be appointed for full terms. After the expiration of the terms of the original ap-

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<sup>21</sup> OHIO GEN. CODE § 2419-3.

<sup>22</sup> 154 A.L.R. 869.

<sup>23</sup> OHIO GEN. CODE §§ 504-3, 1081-17, and 1579-308.

<sup>24</sup> See OHIO GEN. CODE §§ 2293-86, 2293-14, 2435-1, 3005, 3108-2, 3196, 3203-33, 3298-53a, 6346-14, 8974.

pointees, such sections retain these then meaningless provisions. There are many other statutes which contain provisions that are made applicable for a limited time and thereafter are of no effect.

The fourth general objective in any revision is to bring together, under a logical classification system, those statutes and parts of statutes which, because of similarity of subject matter, properly belong together. The proposed plan adopted by the legislature<sup>25</sup> divides the subject matter of the code into titles, chapters, and sections. The title represents the major and most general classification of subject matter in the new code which will be recognized as the Revised Code. Each title is divided into chapters, which are in turn composed of individual sections. The classification of our present code into four parts, fifty-eight titles, forty-two divisions, and six hundred and twenty-four chapters, with consecutive numbering of the sections has been abandoned by the proposed plan in order to gain greater simplicity and to apply a numbering system that will be both elastic and operate as a key to the arrangement of the titles and chapters. The present designation of the parts to the General Code as Political, Procedural, Civil, and Criminal is in no way helpful in arriving at a logical plan of arrangement of our law or the classification of its subject matter. The titles in the new revision cover all the important concepts of our law and can become readily ascertainable by the users.

The Revised Code will contain 29 titles, 511 chapters, and approximately 18,500 sections of law. In rearranging the material from the 58 main titles into an understandable and useful classification system of 29, it was necessary to transfer from one main title to another, and from one classification unit to another, not only whole chapters but frequently numerous sections or portions of sections of statutes in order to effect an orderly arrangement. Since the various statutory subjects, when they have been agreed upon, must be arranged in some kind of order in the statute publication, it would seem desirable, in selecting the subjects, to follow a logical pattern. In other words, the main titles or subjects should be of equal magnitude, rank, or dignity, so as to indicate to the user of the statutes a distinct separation of the law into definite independent groups. The subjects should be such as to express by their very titles, the logic and reasoning which prompted their selection.

The purpose of a statute classification is to make the statutes convenient and readily accessible, and if the user of the statutes cannot understand why the statutes have been separated into different groups the classification will not perform its function. In this respect, the strictly alphabetical system of statute classification

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<sup>25</sup> S.J.R. 10-1947.

fails to meet the test. The limitations imposed by the necessity of selecting a heading or title that will fit into an alphabetical order prevent the selection of broad, general subjects that are commonly known to the user. For example, there is no alphabetical heading that will adequately cover a group containing the statutes relating to the functions of state government, counties, or townships. Logical considerations require these statutes to be brought together, but under an alphabetical system the functions of each political unit must be separated under several alphabetical headings. The alleged conveniences of the alphabetical system of classification rest in the fact that the alphabetical headings enable the user of the statutes quickly to find the particular subject for which he is searching. This necessarily implies that the headings are ones which would occur to the ordinary person. If that kind of heading is to be used, then the statutes cannot be brought together under main subjects of equal rank, because the English language does not supply suitable words with which to express such subjects (keeping in mind that the first word in the heading is the only one that counts in an alphabetical arrangement). On the other hand, if broad title headings are selected to cover major subjects, and those broad title headings are arranged in an alphabetical order, the alleged convenience of the alphabetical system is lost because the headings are not ones that the ordinary user of the statutes would think of from an alphabetical standpoint. The proposed Revised Code combines the logical with the alphabetical listing of its titles and lists the first four titles logically and the remaining 25 titles are run alphabetically with the use of short titles that anyone would think of as pertaining to the subject. The 29 titles selected to cover the major fields of law in Ohio are as follows:

## TITLE

I.....	State Government
III.....	Counties
V.....	Townships
VII.....	Municipal Corporations
IX.....	Agriculture, Animals, and Fences
XI .....	Banks and Building and Loan Associations
XIII.....	Commercial Transactions
XV.....	Conservation, Mining, Waters, and Watercraft
XVII.....	Corporations and Partnerships
XIX.....	Courts—Municipal, Mayor's, and Justice of Peace
XXI.....	Courts—Probate and Juvenile
XXIII.....	Courts—Common Pleas
XXV.....	Courts—Appellate and Supreme
XXVII.....	General Court Provisions and Special Proceedings

XXIX.....	Crimes and Procedure
XXXI.....	Domestic Relations and Children
XXXIII.....	Education and Libraries
XXXV.....	Elections
XXXVII.....	Health, Safety, and Morals
XXXIX.....	Insurance
XLI.....	Labor
XLIII.....	Liquor
XLV.....	Motor Vehicles and Aeronautics
XLVII.....	Occupations and Professions
XLIX.....	Public Utilities
LI.....	Public Welfare
LIII.....	Real Property
LV.....	Roads and Bridges
LVII.....	Taxation

All the existing law of our state of whatever nature can be logically placed within one of these twenty-nine titles. It has been argued that while the main subjects in a statute classification may be arranged either alphabetically or logically, the subordinate subjects or chapters should be arranged alphabetically under each title. This argument loses sight of the fact that a number of laws, such as the laws relating to civil procedure, contemplate that certain steps will be taken in chronological sequence, and it is far better to arrange such laws in the contemplated sequence of the steps set forth in the laws. Also, an alphabetical arrangement of subordinate subjects would prevent arranging of laws in the order of their importance.

In selecting the chapter headings, an effort has been made to provide for the grouping of sections according to the subject dealt with by the sections rather than according to the political unit or agency affected. The chief advantage of this is that it permits the elimination of duplications and lays a foundation for future uniform legislation on the subjects among the various kinds of political units as the district, township, county, and state, whose boundaries are rapidly becoming less important in their effect on general governmental functions.

The pattern followed by the bureau was, first, to select the subjects under which the statutes are to be brought together, and second, to indicate to the users of the statutes, through the classification headings and arrangement, the reasoning which influenced the selection of the subjects. If the classification accomplishes these two purposes the burden which the index must carry is substantially lessened. If a code is logically arranged and the numbering system keyed in with the subject matter the bench and bar will soon be able to ascertain and find any statute without resorting to an index.

The fifth objective of the bureau is to simplify and clarify the statutes by restating them in clear and simple language, and apply-

ing to their construction a uniformity of expression, capitalization, spelling, and punctuation. The revision of each of the present sections of the statutory law of this state consists of amending the partially-obsolete sections, correcting misspelled words, incorrect grammar, ambiguous phrases, and applying consistent punctuation and paragraphing within the section of law. In order to make uniform and facilitate the work of the research attorneys in the bureau, and to prevent any changes in language from affecting the substantive law of the state, the bureau has promulgated extensive and detailed code revision rules<sup>26</sup> which must be rigidly complied with by the attorneys making any proposed changes in our present statutes. The work on each section of law is checked in three operations before being approved by the commission.

Frequently in our present code, superfluous and redundant words appear and add to its complexity. In almost every section of the revised material some simplification of expression has been accomplished. Such phrases as

"it is its duty to;"

"are hereby required to;"

"is hereby authorized and it shall be his duty to;" and

"is hereby vested with power and authority and it shall be

its duty in carrying out the provisions of this act to"

can all be replaced by the word "shall" without any danger of misinterpretation of the meaning. Likewise the word "void" is just as explicit as the much used expression "absolutely null and void, and of no effect." "Shall have power to" has been changed to "may." The law of our state should be relieved of complexity, redundancy, ambiguity and duplicity and should be set forth in plain language with a uniformity of expression and convenient arrangement. A modern code is just as important a working tool to the lawyer as modern equipment is in the factory or to the skilled workman.

The sixth objective of the bureau is to apply a numbering enactments and yet supply a key for the ascertainment of the subject matter immediately by the citation of the number. The decimal system of numbering has long been recognized as the most adaptable type of numbering system and has been adopted by many states and the Federal Government in various forms. Present section numbers like 5542-13b-1 of the General Code could be avoided in our proposed decimal numbering system. The numbering system adopted by the Bureau of Code Revision and approved by the legislature is a system which uses only one decimal and not to exceed six digits for present existing sections. In the approved numbering system the digits to the left of the decimal indicate the

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<sup>26</sup> 1949, Report of Bureau to the Senate and House of Representatives, p. 28.

number of one of the 29 titles, the number of each of which will become of common knowledge to those using the code. The first and second digits to the right of the decimal designate the chapter number, while the third and fourth digits to the right designate the section numbers. The first section in the first chapter of the first title will be numbered 1.0101. The last section of the last chapter of the last title will be numbered 57.4529. Applying the rule stated above, it is seen that the last section in the Revised Code is the twenty-ninth section in the forty-fifth chapter of the fifty-seventh title. In order to allow for the later insertion of related new matter, the plan skips a title or chapter number after each title or chapter in the Revised Code. Because of this procedure the number of the final title in the Revised Code is LVII despite the fact that there are only twenty-nine titles. The system will accommodate an unlimited number of new sections by carrying to the right of the decimal additional digits. The plan thereby places at the disposal of the codifiers one million section numbers. Likewise, it is possible, to add entire chapters, either between existing ones or after the last chapter in any title. The skipping of title and chapter numbers provides space for the insertion of approximately ten thousand sections between any two titles, or of ninety-nine sections between any two chapters. It is believed that this plan represents a system of classification and numbering which will accommodate an ever-expanding body of laws for generations to come. It is further advantageous in the fact that the revised titles and chapters will carry odd numbers which will allow not only unlimited expansion, but will afford the user the opportunity of ascertaining new legislation in years to come by its attachment to the presently unused even numbers.

The seventh and final present objective of the bureau is to obtain the approval of the legislature of its work on the bulk revision as it will be presented during the next biennium. While the bureau can make a reclassification, rearrangement, and revision of the General Code, its work is meaningless and only a feeble gesture without enactment into law and a repeal of those laws which the bureau seeks to replace.

In the consideration of a complete revision of our code the question arises whether to undertake a bulk revision or a topical revision. By bulk revision is meant a revision of the whole code, withholding the re-enactment of any part until the entire work is completed. By topical revision is meant revision topic by topic in accordance with the plan approved by the legislative and the re-enactment of the various topics as the revision of each is separately completed. Each method has advantages. The revisors of 1910 after the completion of four years' work recommended a

bulk revision. The entire General Code of 1910 was presented to the 78th General Assembly in a single bill which was immediately enacted. The work of the revisors must have been accepted by the General Assembly largely on faith, for it is doubtful if even the most zealous legislator could have given the bill careful study. The present revision of our code is of necessity a bulk revision as was the revision of 1910. The bulk enactment by the legislature during that year repealed all the existing statutes and enacted 13,767 sections of new law.

The past forty years have proved that bulk revision without a continuous revision following its passage is not enough and not only proves to be inadequate but also precipitates much criticism. No rules of revision or statutory construction were adopted and published by the codifiers of 1910, so that their efforts were soon nullified by subsequent enactments and amendments during the eighteen succeeding sessions of our legislature without the assistance and direction of a permanent continuous service of revision and research. Elimination and prevention of verbosity, redundancy, and duplicated provisions cannot be accomplished in the next five, ten, or twenty years if hundreds of different individuals with inadequate facilities for research in governmental functions and without knowledge of statutory construction and the rules governing the style of the revised laws are independently drafting legislation.

Uniformity cannot be maintained and a revised code will become a hodge-podge of statutory enactment if subsequent legislation is to be passed without being screened and checked as to form. A bulk revision of statutory law receives some criticism by reason of the change made in the placement of particular statutes in the code, and changes of numbers necessitating the use for a time of cross references and comparative tables. It is to be noted that this temporary inconvenience would result from any rearrangement of the code irrespective of the type of numbering system adopted. The size of the work involved in a bulk revision and the expense incurred require that great consideration be given to a continuous revision in the state of Ohio after the immediate task of general revision is accomplished. The legislature provided in the creative act establishing the bureau that it become a permanent authority of legislative service. The legislature further provided that after the bureau has formulated and prepared the definite plan for the order, arrangement, and classification of the code, it should prepare, and at the beginning of each regular session of the general assembly recommend the introduction of such bills to the general assembly, for the consolidation, revision, and other matters relating to the General Code or any portion thereof

as may from time to time be completed.<sup>27</sup>

The bureau presently is charged with the responsibility of a continuous or a permanent revision of law in this state by the codification of each law after it is passed by the legislature and signed by the governor, the revision of statutes enacted at each session of the legislature, initiation of the repeal or amendment of unconstitutional laws as soon as possible after the court's pronouncement is given, and research in connection with new legislation after enactment to eliminate conflicts, duplications, ambiguities, and obsolete provisions. Unless requested by legislative resolution or committee action, the bureau has no authority to render any service in passing on the matters of form of pending legislation prior to enactment. This condition necessitates the reconsideration of each enactment by the legislature after two years to correct merely errors of form.

In order to facilitate permanent revision it seems essential that every bill not only be codified after enactment as the law now provides, but that it be reviewed and checked as to form by the Bureau of Code Revision before enactment for the purpose of suggesting improvements designed to render the whole statute law clear and harmonious, so that bills enacted in the future be made to conform to the style and rules of construction established by the bureau. If the bureau were to render this service there would be no occasion for resubmitting each enactment for formal corrections.

In addition to Ohio, systems of continuous revision of law now exist in at least nineteen other states.<sup>28</sup> The objective of such a system in most states like Ohio is to obviate the necessity of ever having to repeat in the future the arduous task and temporary disruption of a bulk revision.

Sutherland's *Statutory Construction*<sup>29</sup> recommends the maintenance of official statutory revision by the following statement:

Although few states now maintain official and continuous revision of their codes this should be the objective of every state. The publication of session laws is not enough. Each state should establish an official code and incorporate the product of each legislative session into the code. The cost of infrequent code revisions is enormous while the cost of continuous code revision is relatively slight. It provides an efficient and thoroughly reliable source of statute law. Until the day is reached when every state has an official code which is brought to date after each legislative session

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<sup>27</sup> OHIO GEN. CODE § 76-6.

<sup>28</sup> Connecticut, Florida, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Washington and Wisconsin.

<sup>29</sup> 3rd Ed. Vol. 2, p. 258.



the improvement in the judicial process founded as it is today upon the statutes cannot be achieved.

The initial task of code revision, long overdue, is so great that it has deterred most states from the undertaking. Satisfactory beginnings may be made, however, if codifications of particular branches of the law were begun and continued.

To supplement the regular revision program, the legislature in 1947, not only authorized but directed the bureau by resolution<sup>30</sup> to draft and submit to the General Assembly legislation consolidating the 39 municipal court acts of the state into standard acts, with such variations as local conditions require. The enactment of such a measure into law would not only afford the attorneys and jurists uniformity of practice and procedure in all municipal courts, but would eliminate from the code 1,584 sections of law which are of a special nature. Likewise in 1949 the legislature by resolution<sup>31</sup> directed the bureau to analyze the laws of the state and decisions of the courts pertaining to the subject of domestic relations and the adoption of children. The bureau has made extensive research, conducted public hearings, and will submit to the 99th General Assembly a drafted measure to reflect its work and resultant recommendations. In such cases the bureau makes findings and presents to the legislature changes in the substantive law, but as noted, only upon formal request.

It becomes apparent during the course of the work that certain types and groups of statutes are not suitable for revision because of their controversial character, or cannot be properly revised in the course of a general revision of statutes because of their extreme complexity and the danger of making unanticipated substantive changes in bringing them into order. Such segments of our law can be corrected by the bureau in a separate topical revision after receiving a special mandate of the legislature or in conjunction with the work of a separate legislative commission or administrative authority.

Necessary and recognized changes should be made over a period of time in the field of taxation, the functions of governmental departments, and the unification of the system of trial courts and law enforcement authorities. Laws pertaining to the functions of state, county, and township government are recognized as being inadequate, and yet deal with fundamental problems that go unsolved by reason of old statutory enactments which remain unchanged from one legislative session to another. Complacency and blind acceptance of statutory and some constitutional provisions which were adopted about a century ago (1851) have proved to

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<sup>30</sup> Am. S.J.R. 17.

<sup>31</sup> S.J.R. 32.

be the greatest weaknesses of our democratic system. We should not turn a deaf ear to reasonable requests upon the part of interested citizens and groups for reform in our law concerning the executive branch of our government, or in the legislative procedure and judicial process as well as in other branches of human activity. There is much to be done by the legislature in future sessions in Ohio by the establishment of a pattern for a systematic topical revision of distinct fields of our law. Such can only be accomplished after much research, public approbation, and diligent study on the part of a permanent agency which is thoroughly familiar with the entire body of the statutory law and which has adequate facilities to conduct research and obtain pertinent facts.